

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROLAND JESSE DAZA-CORTEZ,
Defendant-Petitioner,
v.
UNITED STATES OF AMERICA,
Plaintiff-Respondent.

NO. C18-1608RAJ

ORDER GRANTING UNITED
STATES' MOTION TO COMPEL
DISCLOSURE & SETTING OUT
DISCLOSURE PROCEDURE

Having reviewed the United States' Motion to Compel Disclosure, Petitioner's Response, and the Joint Proposal filed by both parties, and based upon the reasons set forth in those pleadings,

IT IS HEREBY ORDERED that Defendant-Petitioner Roland Jesse Daza-Cortez, by alleging ineffective assistance of former counsel in his Section 2255 Motion, has waived his attorney-client privilege for the purpose of litigation of that motion. Accordingly, Mr. Daza-Cortez's prior attorney, Emily Gause, is hereby directed to disclose all material and information in her possession that is relevant to the questions posed by the Court in its prior Order, and necessary to resolve the remaining factual dispute underlying Daza-Cortez's claim of ineffective assistance of counsel. The relevant

1 materials are believed to include, but are not limited to, the following items, dated
2 between January 1, 2017 and March 15, 2017:

- 3 A. Email communications;
- 4 B. Notes from meetings;
- 5 C. Calendar notes regarding dates of meetings; and
- 6 D. Recollection of Ms. Gause.

7 IT IS FURTHER ORDERED that the parties and Ms. Gause shall follow the
8 procedure outlined below for disclosure of this material:

9 1. Ms. Gause will identify all material in her possession that she believes is
10 responsive to the questions posed by the Court and necessary to resolve the disputed
11 claim of ineffective assistance. Ms. Gause will prepare an index of the material, and
12 disclose that material and the index to Counsel for Daza-Cortez not later than fourteen
13 days following entry of the Order to Compel.

14 2. Ms. Gause will prepare a declaration explaining this material, and adding
15 any information from her own memory and knowledge of the facts that she believes
16 would be useful in understanding the material and resolving the disputed claim of
17 ineffective assistance. Ms. Gause will provide this declaration to Counsel for Daza-
18 Cortez at the same time she provides the material described above.

19 3. Within ten days of receiving the material and declaration from Ms. Gause,
20 Counsel for Daza-Cortez will file, ex parte and under seal, any objections to the
21 disclosure on the basis that specific materials and/or portions of Ms. Gause's declaration
22 are not relevant to resolving the disputed claims and, thus, fall outside the scope of the
23 privilege waiver. The filed objections must include a copy of the disputed material or
24 declaration.

25 4. Not later than eleven days after receiving the materials and declaration from
26 Ms. Gause, Counsel for Daza-Cortez shall disclose to the United States all material and
27 portions of the declaration that are not the subject of filed objections. Counsel shall also
28

1 disclose the index to the United States, noting which items (with descriptions redacted, if
2 appropriate) are the subject of his objections.


3 5. The Court will conduct an *in-camera* review of the filed objections, and
4 will issue an Order ruling on the objections.

5 IT IS FURTHER ORDERED that Ms. Gause shall also provide live testimony
6 relevant to resolving the disputed claim of ineffective assistance of counsel at an
7 evidentiary hearing, if requested to do so by either party.

8 IT IS FURTHER ORDERED that, absent further orders from this Court, the
9 evidence provided pursuant to this Order shall be used solely for the purpose of litigating
10 Daza-Cortez's 2255 Motion and shall not be admissible against Daza-Cortez in any other
11 proceeding. This Order shall remain in effect even after the Court has ruled on the 2255
12 Motion. Both parties retain the right to apply to the Court for modification of this Order.

13 IT IS SO ORDERED.

14 DATED this 27th day of April, 2021.

15
16 
17 RICHARD A. JONES
18 UNITED STATES DISTRICT JUDGE

19 Presented by:

20 s/ Sarah Y. Vogel
21 SARAH Y. VOGEL
22 Assistant United States Attorney

23 Approved via email on 4/23/2021
24 ROBERT GOMBINER
25 Counsel for Daza-Cortez

26 s/ Emily M. Gause
27 Emily M. Gause, WSBA #44446
28 130 Andover Park East, Suite 300
Tukwila, WA 98188
206-660-8775 fax: 206-260-7050
Email: emily@emilygauselaw.com